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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,
Appellees.

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,
Appellees.

REPLY BRIEF OF APPELLANT.

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INDEX.

PAGE

Statement 1

I. State minimum price regulations are inconsistent with federal jurisdiction over interstate sales of gas for resale 2

A. This Court's decision in Phillips Petroleum Company v. Wisconsin settled the question.. 3

B. Appellees' "dual regulation" contention is unsound 4

1. The argument that the Natural Gas Act contemplates a system of dual regulation 6

2. The argument that dual regulation should be upheld because of the different purposes involved 10

3. The argument that the Court should not decide which agency has jurisdiction until a "direct conflict" arises 12

4. The argument that the Natural Gas Act was not intended to displace state conservation regulations 17

II. Oklahoma's minimum price orders are invalid under the Commerce Clause even apart from their conflict with the Natural Gas Act 20

A. The Cities Service case is not authority for the orders here involved 22

B. The regulation here involved is not a regulation of production but of price 26

C. The orders of the state commission discriminate against interstate commerce 28

III. The state commission's order in No. 191 violates the principles of the Equal Protection Clause of the Fourteenth Amendment 30

Conclusion 31

Appendix A 33

Citations.

Cases.

Baldwin v. Seelig, 294 U. S. 511 24

Bethlehem Steel Co. v. New York Labor Relations Board, 330 U. S. 767 15

Buck v. Kuykendall, 267 U. S. 307 24

Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co., 237 U. S. 597 11

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179 ..... 2, 22, 23, 24

Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 11

Federal Power Commission v. Natural Gas Pipeline Co., 315 U. S. 575 16

First Iowa Hydro-Electric Co-op. v. Federal Power Commission, 328 U. S. 152 9

Foster-Fountain Packing Co. v. Haydel, 278 U. S. 1 .. 27

Freeman v. Hewitt, 329 U. S. 249 ..... 20, 23

Geer v. Connecticut, 161 U. S. 519 27

Hood v. Du Mond, 336 U. S. 525 26

Hope Natural Gas Co. v. Hall, 274 U. S. 284 24

Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U. S. 498 ..... 8, 10, 19

Lemke v. Farmers Grain Co., 258 U. S. 50 25

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 167 ..... 24, 27
Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346 25
Missouri v. Kansas Natural Gas Co., 265 U. S. 298 19
Napier v. Atlantic Coast Line R. Co., 272 U. S. 605 ..... 11, 12
Oliver Iron Mining Co. v. Lord, 262 U. S. 172 24
Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U. S. 329 8
Panhandle Eastern Pipe Line Co. v. Public Service Commission, 332 U. S. 507 8
Parker v. Brown, 317 U. S. 341 ..... 11, 24
Pennsylvania v. West Virginia, 262 U. S. 553 27
Phillips Petroleum Co. v. Oklahoma, 340 U. S. 190 23
Phillips Petroleum Co. v. Wisconsin, 347 U. S. 672 ..... 2, 3, 4, 5, 6, 13, 17, 18, 19, 20, 28
Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U. S. 83 ..... 19, 25
Public Utilities Commission v. United Fuel Gas Co., 317 U. S. 456 ..... 7, 8, 9, 10, 17, 20
Shafer v. Farmers Grain Co., 268 U. S. 189 25
State Corporation Commission of Kansas v. Federal Power Commission, 206 F. 2d 690 ..... 17, 20, 28
Toomer v. Witsell, 334 U. S. 385 27
United States v. Public Utilities Commission, 345 U. S. 295 15

Statutes.

Federal Power Act, 16 U. S. C. § 791a et seq 9
Natural Gas Act, 15 U. S. C. § 717 et seq ..... 2, 3, ... 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18

Orders.

In Matter of Dorchester Corporation, Docket No. G-6505 (Federal Power Commission) 14, 33-37

Miscellaneous.

Congressional Record, Vol. 81, page 6721 18
Federal Register, Vol. 19, page 8808 13

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REPLY BRIEF OF APPELLANT.

STATEMENT.

Although appellees in Nos. 191 and 321 have filed separate briefs, their arguments in support of the respective orders of the state commission involved in the two cases are substantially identical. In both cases it is argued (1) that the state orders may be sustained despite the acknowl-

edged jurisdiction of the Federal Power Commission over the same sales under the Natural Gas Act, and (2) that the state commission's orders must be held to be consistent with the Commerce Clause in view of this Court's decision in *Cities Service Gas Co* v. *Peerless Oil & Gas Co.*, 340 U. S. 179. In addition, appellees in No. 191 dispute appellant's contention that the state commission's order in that case denies appellant the equal protection of the laws guaranteed by the Fourteenth Amendment. These points will be considered in that order.

I.

STATE MINIMUM PRICE REGULATIONS ARE INCONSISTENT WITH FEDERAL JURISDICTION OVER INTERSTATE SALES OF GAS FOR RESALE.

Last term this Court held in *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, that Phillips is a "natural gas company" whose rates for sales of gas in interstate commerce for resale are subject to regulation by the Federal Power Commission under the Natural Gas Act. Appellees all concede that Panoma Corporation's sales to Natural Gas Pipeline Company of America are of the same character as those involved in the *Phillips* case and are, therefore, also subject to federal regulation, which is now being actively exercised.

Appellees nevertheless argue that state regulation of the same sales should be upheld as an exercise of the State's conservation power. Thus, the issue is squarely raised whether a state, purporting to act in the interest of "conservation," may fix the price at which natural gas shall be sold in interstate commerce even when that sale price is also subject to federal regulation under the Natural Gas Act.

A. This Court's Decision in Phillips Petroleum Company v. Wisconsin Settled the Question.

Appellees' contention that the issue just stated was not before this Court in the *Phillips* case last term is difficult to reconcile with the long and vigorous arguments made by the producing states and Phillips in that case. The Court will recall that producer interests had introduced evidence before the Federal Power Commission which led that body to conclude that its exercise of jurisdiction over the sales in question would conflict with the exercise by the producing states of their regulatory functions, including, in particular, Oklahoma's minimum price regulations. See Record in No. 280, 1953 Term, p. 1746.

On the basis of this determination, Phillips and certain producing state authorities, including appellee Corporation Commission of Oklahoma, made elaborate arguments before the Federal Power Commission, the Court of Appeals and this Court that *because* of the necessary conflict with state minimum price regulations that would result from federal regulation of these sales, the Natural Gas Act should not be construed to extend to such sales. They contended throughout the proceedings that the existence of federal jurisdiction over such sales would result in irreconcilable conflict with state regulation. The idea that the two agencies, both attempting to regulate the price of a single sale, could exist in harmony was rejected as "in direct conflict with all that has been said by the Supreme Court concerning the respective powers of the Federal Power Commission and the States."[1]

This Court recognized that the state regulations so strongly emphasized by the producer interests would con-

[1] Brief of Phillips Petroleum Company before the Federal Power Commission in Docket No. G-1148, filed June 22, 1951, p. 104.

flict with federal jurisdiction over sales of the kind here involved and said:

> "The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control. We expressly rejected any implication to the contrary in the *Interstate* case." 347 U. S. at 681.

It is thus clear beyond cavil that the question of conflict between state and federal regulation of interstate sales was presented to and decided by this Court in the *Phillips* case. State minimum price regulations obviously cannot be binding upon natural gas companies whose rates are subject to Federal Power Commission jurisdiction without also being binding upon the Commission itself. But if the state's orders are conclusive on the Federal Power Commission, its jurisdiction will necessarily "vary from state to state, depending upon the degree of state regulation," a result which this Court specifically rejected in the *Phillips* case.

B. Appellees' "Dual Regulation" Contention Is Unsound.

In both cases appellees argue that dual regulation of rates at which independent producer natural gas companies sell to interstate pipeline natural gas companies should be recognized—at least until the minimum fixed by the state exceeds the maximum fixed by the Federal Power Commission. The basis of this contention should be made clear.

In the *Phillips* case, appellees argued that sales of the type here involved are a part of the production or gathering process and are therefore subject to *exclusive* state control under the exemption provisions of section 1(b) of the Natural Gas Act. This Court rejected that contention,

holding that these sales are not a part of production or gathering but are subject to the jurisdiction of the Federal Power Commission. Now appellees are back with precisely the same argument, that state regulation of these sales is a regulation of production or gathering. But in view of the *Phillips* decision, they now argue that section 1(b) contemplates, not exclusive state control, but dual federal-state regulation of the same transaction. Thus, in attempting to justify state regulation of the sales here involved, appellees say:

> "The production or gathering language of Section 1(b), as construed and applied by this Court, shows that Congress intended that a state should be free to regulate the activity of production." (Br. 321, p. 40.)[2]

But this Court, in answering the comparable argument of the producer interests in the *Phillips* case specifically held that these sales are not a part of production or gathering, as used in the Act:

> "We are of the opinion * * * that production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur." 347 U. S. at 678.
>
> "* * * sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption." *Id.* at 680-681.

Appellees' present argument is thus subject to the same defects as its progenitor. If the sales here involved are not a part of "production or gathering" so as to be exempt from federal regulation under section 1(b) of the Act, they can hardly be a part of "production or gathering" so as to justify dual state-federal regulation. In short, the State's

[2] References to the brief of appellees in No. 191 will be designated (Br. 191, p. ....) and to the brief of appellees in No. 321 as (Br. 321, p. ....). Emphasis is supplied throughout unless otherwise indicated.

argument in support of its authority to regulate these sales in conjunction with the Federal Power Commission rests on the same basis as, and has no more validity than, its argument in the *Phillips* case that its power to regulate such sales is exclusive.

As detailed in appellees' briefs, the basic argument just discussed has several facets: (1) that this Court's decisions recognize the propriety under the Natural Gas Act of dual federal-state regulation, (2) that such dual regulation should be upheld because here the purposes of federal and state regulation are different, (3) that the Court should await a "direct conflict" before resolving the question which agency has jurisdiction, and (4) that the Natural Gas Act was not intended to displace state conservation regulations. Brief comment with regard to each contention is appropriate.

1. The argument that the Natural Gas Act contemplates a system of dual regulation.

It is beyond doubt that, in enacting the Natural Gas Act, Congress did contemplate a dual system of regulation of the natural gas industry. But Congress emphatically did not contemplate dual regulation of the price of the same sales by both federal and state agencies. Rather, it carefully set the boundaries within which each was to act by exempting certain activities from federal control in section 1(b) of the Act. The dual regulation contemplated, therefore, was state regulation of the activities exempted by section 1(b) and federal regulation of the remainder, not contemporaneous regulation of the same activity by both federal and state authorities.

This Court does not need to be reminded that the Natural Gas Act was passed principally to fill the "gap" in regulation of natural gas companies resulting from decisions

prohibiting state regulation of certain interstate aspects of the natural gas business. *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 682-3 and cases cited. The Natural Gas Act accordingly exempted state regulation in areas where the states had been held competent to regulate, while federal regulation was extended to those areas where state regulation had been prohibited.

The principal basis of this Court's decision in the *Phillips* case, and the single basis emphasized by Mr. Justice Frankfurter's concurring opinion, was that sales such as those here involved were not subject to state regulation at the time the Natural Gas Act was passed and thus, being within the "gap," were included within the ambit of federal regulation. And within that area, as the Act makes clear, federal authority is intended to be exclusive. This Court pointed out these principles in *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 467, as follows:

> "It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary to that of the states, *without any confusion of function.* The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the Act, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious dual system of regulation of the natural gas industry— federal and state regulatory bodies operating side by side, each active in its own sphere."

Appellees would have this Court hold that the "dual regulation" contemplated by Congress involved regulation by both state and federal authorities in the same sphere, not complementary but conflicting in their authority.

The cases relied upon by appellees simply emphasize the

dichotomy in the structure of the Act which they now seek to destroy. In *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, the question was whether a state commission could regulate direct sales by an interstate pipeline to industrial customers. This Court held that, because such sales had been declared to be subject to state regulation prior to enactment of the Natural Gas Act, they were not within the "gap" and thus were not sales over which federal authority had been asserted under the Act. Within the area where state regulation had previously been prohibited, however, the Court affirmed that Congress had occupied the field. 332 U. S. at 519.[3]

With the *Panhandle Eastern* cases relied upon by appellees, the Court should compare *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498. There, a state regulatory body had ordered a natural gas company to establish a connection with and supply gas to a local distribution company. This Court concluded, first, that "Congress, by the Natural Gas Act, has brought under national control the very matters which the state has undertaken to regulate by the order." 314 U. S. at 506. Having reached that conclusion, the Court held unanimously that Congress "has given plenary authority to the Federal Commission," and that the state commission was without power to enter its order. Id. at 510.

Public Utilities Commission v. *United Fuel Gas Co.*, 317 U. S. 456, is also directly in point. There, also, the Court found first that the Natural Gas Act had vested authority in the Federal Power Commission to regulate the matters

[3] *Panhandle Eastern Pipe Line Co.* v. *Michigan P. S. C.*, 341 U. S. 329, was similarly based upon the principle that the state regulation was of a type which had been subject to state regulation prior to the Natural Gas Act and was thus intended by Congress to be within the exemption of facilities used for the local distribution of natural gas to consumers.

which the state had undertaken to regulate (sales by interstate pipelines to local distribution companies). After examining the scope and extent of the Federal Commission's jurisdiction, this Court declared:

> "Upon the undisputed facts in this record, United is plainly subject to the *exclusive* jurisdiction of the Federal Power Commission with respect to the rates and charges for natural gas transported by it from West Virginia and Kentucky to Ohio. * * *
>
> The power to fix rates for natural gas transported and sold in interstate commerce has been entrusted *solely* to the Federal Power Commission." 317 U. S. at 467-8.

Finally, the very contention now made by appellees was also made and rejected in *First Iowa Hydro-Electric Co-op v. Federal Power Commission*, 328 U. S. 152, a case arising under the Federal Power Act. There, it was contended that a state and the Federal Power Commission had dual control over the question whether a company subject to the jurisdiction of the Federal Power Commission should be permitted to construct a dam. But this Court said, in language entirely pertinent to the present claim under the Natural Gas Act:

> "In the Federal Power Act there is a separation of those subjects which remain under the jurisdiction of the states from those subjects which the Constitution delegates to the United States and over which Congress vests the Federal Power Commission with authority to act. To the extent of this separation, the Act establishes a dual system of control. The duality of control consists merely of the division of the common enterprise between two co-operating agencies of Government, each with final authority in its own jurisdiction. The duality does not require two agencies to share in the final decision of the same issue. *Where the Federal Government supersedes the state government there is no suggestion that the two agencies both shall have final authority.*" 328 U. S. at 167.

In short, the Natural Gas Act does contemplate dual federal-state regulation of the natural gas industry. But within the area where Congress has vested regulatory authority in the Federal Power Commission, and specifically in the area of regulation of rates of interstate sales of gas for resale, that authority is exclusive. The cases relied upon by appellees involved matters *within* the exemption provisions of section 1(b) of the Natural Gas Act. But the *Phillips* case decided that sales of the character here involved were outside the exemption.

2. The argument that dual regulation should be upheld because of the different purposes involved.

Appellees appear to suggest that, while dual federal-state regulation of the same sales would be improper if the state regulations were imposed for the same purposes as the federal regulation, state regulation should be sustained if it is intended to serve a different purpose. (See Br. 321, p. 32.) Indeed, this appears to be the sole basis upon which appellees seek to distinguish the *United Fuel Gas Co.* and *Illinois Natural Gas Co.* cases.[4]

This Court certainly did not suggest in either of those cases that state jurisdiction over the very matters which Congress has brought under national control would have been sustained if the state had asserted that its purpose was different from that underlying federal regulation. In fact, appellees' present argument is a curious inversion of the usual argument that state regulation should be upheld because its purposes are the same as, or complementary to,

[4] Appellees state at p. 32 of their brief in No. 321: "No doubt within the area *and for the purposes prescribed by Congress* the authority of the Federal Power Commission is paramount and exclusive. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498; *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456."

the federal regulatory scheme. *Cf. Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 169; *Parker* v. *Brown*, 317 U. S. 341, 367.

The fact that the federal and state regulations were intended to serve different purposes, which appellees here concede and even seek to capitalize, has always been considered a strong ground for holding the state action invalid. For it necessarily follows that different purposes are more likely to result in conflict and repugnance than similar purposes, as this Court has often pointed out. Mr. Justice Holmes, with characteristic incisiveness, rejected an argument that a state law relating to claims against interstate carriers could coexist with the Carmack Amendment to the Interstate Commerce Act with the statement:

> "It is suggested that the act is in aid of interstate commerce. The state law was not contrived in aid of the policy of Congress, but to enforce a state policy differently conceived; * * *" *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604.

Moreover, in *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, this Court considered and rejected the very contention now made by appellees. There, a state law requiring automatic locomotive fire doors and cab curtains was held invalid as in conflict with the federal Boiler Inspection Act. The Court's opinion notes that the main argument by the State was that the federal and state laws involved were "aimed at distinct and different evils" in that the federal act was designed solely to prevent accidental injury, while the state act was intended to prevent sickness and disease due to exposure. 272 U. S. at 612. But the Court, speaking through Mr. Justice Brandeis, rejected the argument, pointing out that:

> "The federal and the state statutes are directed to

> the same subject—the equipment of locomotives. They operate upon the same object. * * * Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or different their purpose." 272 U. S. at 612-613.

When appellees argue, therefore, that Oklahoma's minimum price orders with respect to sales subject to rate regulation by the Federal Power Commission should be sustained *because* the purposes of the two regulatory systems are different, they rely upon a condition which has always been thought to require precisely the contrary result. The attempt to distinguish prior decisions setting aside state regulation of matters subject to Federal Power Commission jurisdiction on the ground that in this case the state's regulation reflects a different purpose than that of the Natural Gas Act thus simply emphasizes the essential repugnance and conflict in attempted dual regulation of the same sales.

3. The argument that the Court should not decide which agency has jurisdiction until a "direct conflict" arises.

Appellees further argue that the Court should await a "direct conflict" between orders of the state commission and the Federal Power Commission before deciding the question of the state's jurisdiction to regulate the price of sales of natural gas in interstate commerce for resale. It is suggested that the state may continue to set minimum prices and the Federal Power Commission to set maximum rates until the minimum set by the state exceeds the maximum fixed by the federal agency.

One answer to that contention is that such a conflict is actually presented by these appeals. The state commission has required payment of the prices set forth in the respective orders. The provisions of the Natural Gas Act,

and the Federal Power Commission's regulations thereunder, require that the contract rate be paid until a different rate is established by appropriate proceedings before the Commission.

Section 4 of the Natural Gas Act (15 U. S. C. § 717c) provides that every natural gas company must file with the Commission a schedule showing its rates and charges, together with all contracts affecting or relating to such rates, and that no changes may be made in such rates except after following the procedure before the Commission which the Act prescribes. It was thus the duty of all natural gas companies, including Panoma, to file schedules showing their contract prices with respect to each new sale of gas subject to the jurisdiction of the Federal Power Commission. And such contract prices, as stated above, constitute the only lawful rates under the Act until that rate has been changed in accordance with the statute.

The Federal Power Commission in its order 174-B, issued after this Court's decision in the *Phillips* case, recognized and applied this requirement of the statute. In that order the Commission directed that independent producers file and abide by rate schedules, which are defined in the order as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954."[5] Thus, the Commission has recognized that the prices shown by the basic contract and supplements thereto constitute the only lawful rate of an independent producer natural gas company until changed in the manner prescribed by the Act.

Appellees imply that, because the Federal Power Commission has not made representations to the Court concerning this conflict, it must be assumed to have acquiesced in the state commission's directives. The fact is, however,

[5] 19 Fed. Reg. 8808.

that the Federal Power Commission, in permitting a rate filing by Dorchester Corporation (Panoma's successor) with respect to the sales here involved, expressly reserved the question whether the state commission's 9.8262 cent order could properly be considered a part of Dorchester's rate, pending this Court's decision in the instant cases. In its order (a copy of which is attached hereto as Appendix A) the Commission said:

> "In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.
>
> "To protect the rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

It is thus clear that the Federal Power Commission is awaiting this Court's decision as to whether it is required to adhere to Oklahoma's minimum price orders and that, except for the fact that the state's orders are presently outstanding, Dorchester's rates under section 4 of the Natural Gas Act would be the prices set forth in the contract between Natural and Harrington & Marsh, and supplements thereto. To argue that the Court should await a "direct conflict" is to overlook the clear and present conflict that now exists.

But appellees' contention that state regulation should be sustained until the state-fixed minimum exceeds the federal maximum faces a much more basic difficulty. That difficulty is that a conflict between state and federal authority arises from the very assertion by the state of power to regulate the same sales over which the Federal Power Commission is given jurisdiction under the Natural Gas Act. The question of jurisdiction does not depend upon whether the state and federal agencies have so far actually clashed in the exercise of their respective jurisdictions, for as this Court has said, "* * * the power to decide a matter can hardly be made dependent on the way it was decided." *Bethlehem Steel Co.* v. *New York Labor Relations Board*, 330 U. S. 767, 775. And again, in *United States* v. *Public Utilities Commission*, 345 U. S. 295, the Court pointed out that when federal and state agencies both assert jurisdiction over the same rates, the contention that the Court should await a direct clash of orders "misses the point that we are here considering whether or not the state agency had jurisdiction at the outset to consider these rates at all." 345 U. S. at 299 (footnote 1).

Rather, the question is whether state regulation of these sales would interfere with and limit the jurisdiction of the Federal Power Commission, as set out in the Natural Gas Act, over the same sales. And the answer, we submit, is that it clearly would do so. The Natural Gas Act provides that rates and charges for the sale of natural gas in interstate commerce must be "just and reasonable." § 4(a). Under § 4(c), companies subject to the Act must file schedules of rates and charges with the Federal Power Commission, and no changes in such schedules can be made without notice to the Commission and the public. § 4(d). Acting either upon its own motion or upon complaint, the Commission can inquire into the legality of rates and charges of companies subject to its jurisdiction and may

suspend changes in rates in the meantime. § 4(e). And after a hearing, the Commission "shall determine the just and reasonable rate" and "fix the same by order." § 5. To intrude a state-fixed floor or minimum into the comprehensive regulatory plan thus created by Congress would distort that plan beyond recognition.

Appellees seek support for their theory of dual regulation by contending that the state and federal agencies involved are not "competing authorities"; that the state may fix *minimum* prices in the interests of conservation while the Federal Power Commission prescribes *maximum* prices to protect consumers. (Br. 321, p. 31.) This contention overlooks the fact that under the Natural Gas Act the Federal Power Commission does not fix the maximum rate but sets "*the* just and reasonable rate * * * to be thereafter observed and in force." § 5. Whatever rate is set by the Federal Power Commission, in other words, is the single lawful rate that can thereafter be charged.

In this branch of their argument, appellees further urge that this Court should not presume that the Federal Power Commission "will act in disregard of the legitimate interests of the State of Oklahoma in the conservation of its natural resources." (Br. 321, p. 33.)[6] But they would deny the Commission the power to exercise any independent judgment on that subject. It is difficult to understand how the Federal Power Commission could set *the* just and reasonable rate, taking into account all of the various considerations involved, including the interests of the producing states, if its judgment was then circumscribed by minimum price orders fixed by state agencies.

[6] If appellee's contention is that the Federal Power Commission is required to give effect to Oklahoma's conservation policies in setting the rates of independent producers, that contention is, of course, erroneous. *Cf. Federal Power Commission* v. *Natural Gas Pipeline Company*, 315 U. S. 575, 586.

In short, the fact that the Federal Power Commission is given authority to ascertain and fix the single "just and reasonable rate" necessarily presupposes that it alone has jurisdiction to determine what is just and reasonable. To hold that a state's minimum price orders have independent validity is to take from the Commission the power to make that determination itself. This Court has already held in a parallel situation that "[t]he power to fix rates for natural gas transported and sold in interstate commerce has been entrusted *solely* to the Federal Power Commission." *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 468. The contention now being made, in the words of Judge Woodrough, "is simply another attempt to prevent the Federal Power Commission's exercise of its power to regulate within the confines of its own jurisdiction according to its own judgment * * *" *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690, 704.[7]

4. The argument that the Natural Gas Act was not intended to displace state conservation regulations.

The argument that the Natural Gas Act should not be so construed as to interfere with state conservation regulations is simply a repetition, with a few added variations, of the arguments made by the producer interests in the *Phillips* case. The argument was there rejected.

[7] Appellees in No. 191 faintly suggest (Br. 191, p. 25) that the order in No. 191 should be upheld because the *Phillips* decision did not come down until after that order had been superseded by the order in No. 321. But this contention overlooks the fact that the conflict here involved is between state regulation and the authority granted the Federal Power Commission under the Natural Gas Act. The fact that the Commission, through a mistaken view of its jurisdiction, did not enforce the Act prior to the *Phillips* case does not make the state's action any less an intrusion upon the domain of federal authority established by Congress.

As in the *Phillips* case, appellees point to statements in the committee reports and on the floor of Congress to the effect that the bill was not intended to interfere with state conservation measures. But they overlook the fact that these statements refer to state regulations that were then in existence and being lawfully exercised by the states. Thus, for example, Congressman Lea's statement referred to by appellees was that the "bill takes nothing from the State Commissions; they still retain all the State power *they have at the present time.*" 81 Cong. Rec. 6721. The exemption provisions of section 1(b) were drawn on this basis. As appellees themselves assert, no state commissions were then imposing minimum price regulations upon interstate sales of natural gas, and it cannot therefore be contended that the statements quoted by appellees referred to or were intended to apply to such state regulation of interstate sales. In short, it is one thing to say that the Natural Gas Act was not intended to interfere with state regulation as it then existed, involving such things as well spacing, proration, unitization and many other purely local activities. It is quite another thing to say that Congress intended to approve in advance any regulation a state might see fit to adopt in the future, whatever its national effect.

Appellees next attempt to avoid the force of the statement in the committee reports that the basic purpose of the Natural Gas Act was "to occupy the field in which the Supreme Court has held that the states may not act" by arguing (1) that state minimum price regulations adopted in the interest of conservation had not been held unlawful in 1936 and 1937 and thus were not within the "gap," and (2) that the Natural Gas Act was not designed to fill any gap in state conservation authority but only the gap in the authority of the states to regulate utility rates.

There are a number of difficulties with these arguments.

In the long history of Natural Gas Act litigation, it has never before been suggested, so far as we know, that the "gap" depended upon the kind of regulation the state was attempting to enforce. There is no suggestion in this Court's opinions construing the Act or in its legislative history that the gap—and hence the extent of Federal Power Commission jurisdiction—was of one dimension if the state interest involved was rate regulation for the benefit of consumers and of another dimension if the state interest involved was rate regulation for the benefit of producers and royalty owners.

The reason why Congress and this Court drew no such distinction in defining the limits of state and national power under the Natural Gas Act is that when the Act was passed, the power of the states to regulate the natural gas industry was usually based upon what Mr. Justice Stone referred to as the "mechanical test for determining when interstate commerce ends and intrastate commerce begins." *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 504. The cases cited by the committee reports as creating the gap, *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, and *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298, had applied this test. The question in those cases was not the motivation behind the state's regulation but whether it directly burdened interstate commerce.

The "gap" which Congress filled with a federal authority was thus a total absence of state power over certain transactions involving interstate commerce. One of these transactions was the interstate sale of natural gas for resale. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672. Having provided specifically and in detail for jurisdiction in the Federal Power Commission to regulate the transactions which the states had been held incapable of regulating, Congress certainly did not leave it open to a

state to intrude upon the federal domain merely by asserting that its interest was "conservation," rather than "utility rate regulation."[8]

In sum, state minimum price regulation of the sales here involved presents a direct, inescapable conflict with federal regulation by the Federal Power Commission. Two masters cannot rule the same house. Either the Federal Power Commission must obey the state orders, in which case its authority is limited in a manner contrary to the Act, or it need not do so, in which case the state's order is a nullity. This Court has already held that the power to fix rates for sales of gas in interstate commerce for resale "has been entrusted solely to the Federal Power Commission." *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456, 468. That, certainly, has been the view of the federal courts generally. *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir.). And the same opinion, we submit, is implicit in this Court's decision in the *Phillips* case.

II.

OKLAHOMA'S MINIMUM PRICE ORDERS ARE INVALID UNDER THE COMMERCE CLAUSE EVEN APART FROM THEIR CONFLICT WITH THE NATURAL GAS ACT.

The foregoing discussion involving the conflict of Oklahoma's minimum price regulations with the Natural Gas Act assumes that, in the absence of the Act, the state could impose its minimum price regulations on the interstate

[8] Appellees' emphasis on the fact that the asserted state interest is "conservation" assumes that the state's power under that head is greater than, for example, a state's power to protect its citizens by public utility regulation. That this assumption is unwarranted, particularly when the chief element of "conservation" is economic benefit to local citizens, is clear from this court's decisions. Cf. *Freeman* v. *Hewitt*, 329 U. S. 249, 252, 257. Here, the findings as to "conservation" constitute merely a pretext for price fixing.

sales here involved. It is appellant's position, however, that, quite apart from the Natural Gas Act, the state orders here involved would in any event contravene the Commerce Clause and are invalid.

Appellees in No. 321 go to some lengths to attempt to justify the 9.8262 cent order on the basis that the increase from 7 cents was necessary to effectuate the conservation policies of the State. Appellant does not here contend that the state commission's conclusions do not represent a permissible legislative judgment measured by standards of due process. But since the state's interest must be measured beside that of the nation where interstate commerce is involved, the Court will examine for itself the record in No. 321 to ascertain the true nature of Oklahoma's asserted interest in "conservation".

The record shows that the Oklahoma commission's version of waste prevention has very little to do with physical waste of gas, protection of correlative rights and other traditional conservation measures. Instead, the commission was almost entirely concerned with what it calls "economic waste," which is nothing more than a conclusion that local producers and royalty owners are not being paid enough for their gas. Both witnesses who testified regarding conservation spent all but a fraction of their time on "economic waste."[9] The only testimony concerning physical waste is that "small quantities" of gas are wasted in cleaning out gas wells, part of which might be prevented by a different, more expensive method of operation. (321 R. 26-27.) There is no evidence whatever that the increased price fixed by the

[9] Witness Bailey's direct testimony on "economic waste" (comparative value of fuels) extends from page 12 to page 26 of the record in No. 321 and embraced 10 exhibits. His direct testimony on physical waste is at pp. 26-27 and on correlative rights at pp. 27-28. Witness Biddison's direct testimony on "economic waste" extends from page 53 to page 57 and on correlative rights from page 57 to page 58.

order will have any effect whatever on physical conservation of gas.

The testimony concerning protection of correlative rights is similarly vague and inconclusive. It was, simply, that higher prices would "have a tendency" to fuller development of the field and "tend" to produce revenue to mineral owners in fringe areas of the field. (321 R. 57-58.) No attempt was made to relate any particular price to the development of any additional wells.

Aside from the question of "economic waste," therefore, the evidence in support of the state's interest in conservation is negligible. And since "economic waste," as used by the State of Oklahoma, involves essentially a comparison of the cost of natural gas and other fuels in the consuming markets of the nation, a strong national interest is directly and immediately involved in Oklahoma's action.

Appellees' arguments with respect to the State's power, under the Commerce Clause, to fix minimum prices boil down to two: (1) that *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U. S. 179, is authority for the state's action,[10] and (2) that the regulation involved is a regulation of production, not of a sale in interstate commerce.

A. The Cities Service Case Is Not Authority for the Orders Here Involved.

Appelees in both cases place most of their reliance in the *Cities Service* case. In doing so, they forget this Court's admonition "that especially in this field opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts."

[10] Appellees of course recognize that the question of the effect of the Natural Gas Act upon Oklahoma's minimum price regulations was expressly reserved in the *Cities Service* decision.

Freeman v. *Hewitt*, 329 U. S. 249, 252. The Court had before it in the *Cities Service* case the question whether a state could fix a minimum price for raw natural gas sold at the wellhead, prior to gathering, processing and shipment in interstate commerce. Appellees seem to contend that because at the time of the *Cities Service* case the court presumably knew that some sales were not made at the wellhead but only after completion of gathering and processing, the Court must have intended to uphold the order with respect to those sales as well.

But this argument ignores the fact that this Court only decides "cases and controversies," not abstract questions of law. It decided in the *Cities Service* case that when sales were made at the wellhead, under the circumstances there involved, the state's order was valid. It did not decide any further or broader question because the case presented no further or broader controversy. The fact is emphasized by the Court's reservation of the Commerce Clause question in the companion case, *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, where sales away from the wellhead *were* involved but the Commerce Clause question had not been raised.

Appellees' contention is, in last analysis, that there is no distinction so far as the Commerce Clause is concerned between a sale of raw gas at the wellhead, concomitant to production and prior to gathering and processing, and a sale of the residue constituent at the mouth of an interstate pipeline after all of those events have occurred and the processed gas has been taken aboard the interstate carrier. Appellees assert that the interstate movement begins at least as far back as the production stage, and even perhaps in the underground formations. They therefore ask the rhetorical question why, if a state may regulate at the production stage, it may not do so at the mouth of the interstate pipeline.

A similar issue was raised in the field of taxation of interstate commerce in *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157. There, Texas attempted to justify a tax on the "taking" of gas by a pipeline company at the outlet of a gasoline plant (the point of sale) on the basis of cases upholding state taxation of the production of commodities for interstate commerce.[11] But this Court, speaking through Mr. Justice Clark, who also wrote the Court's opinion in the *Cities Service* case, rejected the contention, pointing out that

> "the State has delayed the incidence of the tax beyond the step where production and processing have ceased and transmission in interstate commerce has begun." 347 U. S. at 167.

As this Court has made clear, the state's local interest is greatest at the point of production. As the state attempts to tax or regulate activities farther removed from the production process and closer to actual transportation of the commodity in interstate commerce, the state's interest becomes less and the national interest greater. The state's power is, of course, at its lowest ebb when it attempts to regulate interstate transportation itself or to project its regulation into another state. *Cf. Buck* v. *Kuykendall*, 267 U. S. 307; *Baldwin* v. *Seelig*, 294 U. S. 511[12]. Thus, while the interstate movement may begin at the point of production, the state's interest by no means remains constant in all phases of that movement.

The *Cities Service* case was concerned with regulation at the point of production—the situation in which the state's interest is most obvious. *Parker* v. *Brown*, 317 U. S.

[11] *E.g. Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 170; *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284.

[12] Oklahoma has, in fact, reached this stage by attempting to regulate the price at which Phillips sells Oklahoma-produced gas to Michigan-Wisconsin Pipe Line Co. *in Texas*. (321 R. 143.)

341, the case principally relied upon, was of exactly that character. The Court did not, therefore, even feel it necessary to discuss such cases as *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189 and the *Attleboro* case, which involved state regulation at the commencement of interstate transportation.

It is not appellant's position that the fact that the transaction which the state attempts to regulate is closely related in time and distance to interstate movement automatically tips the scales against state regulation. If only a small proportion of the commerce affected by the regulation is interstate, the local interest involved may yet outweigh the national interest in the free flow of commerce. *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346.

But here, as in the *Lemke* and *Shafer* cases, approximately 90% of the commodity regulated by the State is immediately shipped interstate. This was the precise basis upon which those cases were distinguished in the *Eisenberg* case, where only about 10% of the milk subject to the regulation was shipped interstate. As this Court there said:

> "Only a small fraction of the milk produced by farmers in Pennsylvania is shipped out of the Commonwealth. There is, therefore, a comparatively large field remotely affecting and wholly unrelated to interstate commerce within which the statute operates. These considerations we think justify the conclusion that the effect of the law on interstate commerce is incidental and not forbidden by the Constitution, in the absence of regulation by Congress." 306 U. S. at 353.

So far as the Commerce Clause question is concerned, appellant is entirely willing to have the issue judged by the standards of the *Eisenberg*, *Shafer* and *Lemke* cases. For,

judged by those standards, Oklahoma's attempt to fix the price of the sales here involved must fail.[13]

B. The Regulation Here Involved Is Not a Regulation of Production But of Price.

Appellees in both cases argue that the orders in question are not regulations of interstate sales but of production. It is said that the state has merely adopted a formula for the enforcement of the wellhead price and that, while stated in terms of a price at the conclusion of gathering and processing, the order is nevertheless simply a regulation of production.

There are several obvious answers to this contention. In the first place, the provision of the state orders prohibiting production unless a certain price is obtained for the gas is not the end or purpose of the regulation but merely the sanction imposed to enforce compliance with the minimum price requirement. There is no dispute about this fact. The state commission's first finding in No. 321 is:

> "1. That this is an application of certain mineral owners in Texas County, Oklahoma for an order *determining the minimum price at which gas in the Guymon Hugoton Field may be first purchased* or sold." (321 R. 133.)

While production is no doubt a local activity subject to a large measure of state control, it cannot be made the vehicle for the enforcement of state regulations of interstate commerce that are themselves beyond the state's power. If, for example, the State of Texas had framed its "gathering tax" statute to provide that no gas should be produced in the State unless, when sold at the outlet of a gasoline plant, the purchaser paid the gathering tax, the

[13] See also, *Hood* v. *Du Mond*, 336 U. S. 525, 571 (dissenting opinion).

result would hardly have been different. *Cf. Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 167.

Foster-Fountain Packing Co. v. *Haydel*, 278 U. S. 1 and *Toomer* v. *Witsell*, 334 U. S. 385, 403-406, are decisive in this regard. Both cases involved state laws requiring, *as a condition of engaging in the catching of shrimp*, that the persons engaged in that occupation comply with regulations that inhibited the subsequent interstate movement of the shrimp. There was no question that the states' interest in the shrimp was as great as Oklahoma's interest in natural gas.[14] But this Court held that the states could not, as a condition of production, impose restrictions violative of the Commerce Clause; that when a state sees fit to permit interstate commerce in its commodities, persons dealing in those commodities "are not bound to comply with, or estopped from objecting to the enforcement of, conditions that conflict with the Constitution of the United States." 278 U. S. at 13.

The theory that the fixing of a price for gas sold at the conclusion of gathering and processing is simply the application of a formula for relating that price back to the wellhead is subject to the same objection. The fact that the state may be able to fix a minimum price for wellhead sales, absent the Natural Gas Act, does not mean, in other words, that it may project its legislation into other states in an effort to control sales not made at the wellhead. *Cf. Baldwin* v. *Seelig*, 294 U. S. 511. To illustrate: Many pipeline companies produce some of their own gas. The first sale of that gas may be to a distribution company in Indiana or Ohio, or to an industrial consumer in Michigan. May Oklahoma, because it may set minimum prices for wellhead

[14] In fact, the shrimp were assumed to be wild game as to which the state may prohibit the interstate shipment, *Geer* v. *Connecticut*, 161 U. S. 519, whereas the state probably has no such power with respect to natural gas. *Pennsylvania* v. *West Virginia*, 262 U. S. 553.

sales, also regulate the price at which the pipeline company-producer sells gas to distribution companies or industrial consumers?[15] Merely calling a regulation of sales in interstate commerce a "relation back" to the wellhead does not change the essential nature of that regulation.

C. The Orders of the State Commission Discriminate Against Interstate Commerce.

Appellees in No. 321 take issue with appellant's contention that the State minimum price regulations are aimed at and discriminate against interstate commerce, in that the only field in which minimum prices have been prescribed is the Guymon-Hugoton field, where 89% of the gas is shipped interstate, while the other fields in Oklahoma, which ship less than 15% of their gas interstate, have been left unregulated. It is argued that there is no proof of conditions in the other fields or whether different conservation problems are raised by the production of casinghead gas from oil wells as against production of dry gas in a field such as Guymon-Hugoton.

This argument ignores what is common knowledge in the oil and gas industry, that price is a much more important consideration in preventing waste of gas produced in connection with oil than of gas produced alone. Appellee Phillips Petroleum Company stated to this Court in its brief in the *Phillips* case last term:

> "In no area is the relationship of price to conservation of gas more strikingly apparent than in the instance of casinghead gas, which is produced only as

[15] That was the situation in *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir.), where the Court of Appeals denied the right of Kansas to require a pipeline company-producer to "attribute" a particular minimum wellhead price to sales subsequently made to distribution companies.

> and when oil is produced. Unless casinghead gas is gathered and marketed immediately, it is lost either by flaring or being allowed to escape. Billions of cubic feet have been so wasted. The extent to which the gas will be gathered and utilized relates most directly to the price for gas, for utilization of casinghead gas involves considerable expense * * *." (Brief of Phillips Petroleum Co. in No. 280, 1953 Term, p. 78.)

It is curious indeed that in the fields in which "the relationship of price to conservation [is most] strikingly apparent" the state commission has not seen fit to adopt minimum price regulations but has chosen, instead, to impose such regulations on the one field in which there is almost no physical waste. (321 R. 95, 27.) Moreover, appellees' implication that there may be differences between the different producing fields fails to take account of the fact that most of the considerations relied upon by the state commission would not vary in any event. Economic waste, based upon a comparison of the price of gas with the prices of other fuels, loss to royalty owners and loss to the state in taxes are the same whatever the physical characteristics of the field.

Finally, the fact that Oklahoma's minimum price regulations are aimed at interstate commerce is apparent in the state commission's preoccupation with "economic waste." When the principal basis of the orders is testimony that natural gas is selling for less than other fuels in interstate markets, the order is necessarily designed to raise those prices. When, at the same time, the effect upon Oklahoma markets is negligible, discrimination against interstate commerce is apparent.[16]

[16] Appellee's claim that this issue is not properly before this Court is without substance. Appellant has at all times contended that the state commission's orders violate the Commerce Clause and has argued, as a part of that contention, that a discrimination against interstate commerce is undoubtedly a burden on such

III.

THE STATE COMMISSION'S ORDER IN NO. 191 VIOLATES THE PRINCIPLES OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Appellees in No. 191 defend the state commission's order directing Natural to pay Panoma 7 cents per Mcf. for residue gas while, at the same time, approving the payment by Panhandle Eastern to Phillips of slightly more than half that amount.[17] They say (Br. 191, p. 30):

> "There can be no denial of equal protection if all parties are governed by the same rule. The rule prohibiting denial of equal protection may be invoked only upon satisfactory proof by pertinent evidence of different practices upon like but different sales."

We agree. Measured by that test, the state commission's order in No. 191, holding that Natural must pay 7 cents for residue gas alone cannot be reconciled with the commission's earlier order finding that Phillips was complying with the regulations by obtaining approximately 7 cents for *both* the liquid and residue constituents of its gas. Obviously, all parties were not "governed by the same rule." Indeed, the state commission admitted as much when, in its order, it stated with respect to its action in the case of Phillips: "* * * this Commission does not feel it is bound herein by any determination of facts or any order entered therein; * * *." (191 R. 85.)

commerce. This Court's rules (Rule 10) provide that "The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein." It seems obvious that discrimination against interstate commerce is a "subsidiary question fairly comprised" within the contention that the orders violate the Commerce Clause. (321 R. 200-201.)

[17] By inadvertence appellant stated at page 36 of its opening brief that Phillips was receiving 4.67 cents per Mcf for its residue gas. Its actual receipt was 4.17 cents on the pressure base fixed in the order.

CONCLUSION.

The state commission's orders in Nos. 191 and 321 cannot be reconciled with the jurisdiction of the Federal Power Commission over the same sales under the Natural Gas Act. Moreover, even apart from the Natural Gas Act, the state's orders would constitute an unlawful regulation of interstate commerce. Finally, the state commission's order in No. 191 violates long established principles of equal protection of the laws. The judgments of the Supreme Court of Oklahoma sustaining the state commission's orders should accordingly be reversed.

Respectfully submitted,

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APPENDIX A.

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners:

Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of
Dorchester Corporation. }

ORDER ALLOWING RATE SCHEDULE AND SUPPLEMENTS TO TAKE EFFECT.

Dorchester Corporation (Dorchester), on October 28, 1954, tendered for filing, pursuant to Order No. 174-A issued August 6, 1954, in Docket No. R-138, the basic contract and certain supplements providing for the sale in interstate commerce to Natural Gas Pipeline Company of America (Natural) of natural gas produced in Guymon-Hugoton Field, Texas County, Oklahoma. The tendered filings have been respectively designated as Dorchester Corporation FPC Gas Rate Schedule No. 2, and Supplements Nos. 1 through 3 thereto.

Gas Rate Schedule No. 2 is a contract dated December 1, 1946, between Harrington & Marsh, a predecessor of Dorchester, and Natural, providing a price of 7¢ per Mcf at 16.4 psia for gas purchased by Natural under the basic contract. Supplement No. 1 thereto is a letter dated February 25, 1948, from Natural to Harrington & Marsh agree-

ing to a modification of the basic contract. Supplement No. 2 is an amendment dated October 1, 1949, between Natural and Panoma Corporation (Panoma) of the basic contract. Panoma is also a predecessor of Dorchester, having succeeded to the rights of Harrington & Marsh. Neither supplement, however, altered the basic contract price for natural gas.

Supplement No. 3 is a copy of Order No. 26096 of the Corporation Commission of the State of Oklahoma entered July 29, 1952, in its Cause CD No. 3628 fixing a minimum price of 9.8262¢ per Mcf at the wellhead at a pressure of 14.65 psia for gas produced from any well located in Guymon-Hugoton Field. Such order of the Corporation Commission of the State of Oklahoma applies to all gas produced in Guymon-Hugoton Field, Texas County, Oklahoma, including residue gas purchased by Natural at the outlet of a gasoline plant operated by Dorchester. On the basis of such order, Dorchester claims that the effective price to Natural as of June 7, 1954, is 9.8262¢ per Mcf at 14.65 psia.

Natural, on November 10, 1954, by telegraphic advice protested Dorchester's filing of the minimum price order, stating in part:

> "Natural denies that such order of the Corporation Commission of Oklahoma is valid as to its purchases of residue gas from Dorchester at the outlet of that company's gasoline plant and denies that the same constitutes an amendment of its said contract with Dorchester Corporation within the meaning of Order No. 174-A of your Commission. To the contrary Natural alleges that on June 7, 1954, the contract price and the legal price as contemplated by Order 174-A was seven cents per Mcf measured on a 16.4 pound pressure base as provided under Section 6 of such contract, and that it has never paid the price prescribed by said Order 26096 save under compulsion and duress of said order

and with written protest and full reservation of its right to recover payment in excess of the price provided in Section 6 of the contract. Natural further alleges that the validity of such Order 26096 as applied to the sales of gas to Natural is the subject matter of an appeal to the Supreme Court of the United States in Cause No. 321, October Term 1954, and that on November 8, 1954, that Court noted its probable jurisdiction in the cause."

Natural requests that the Commission reject the filing of Supplement No. 3 as a part of Dorchester's tariff or, in the alternative and in the event the Commission shall accept Supplement No. 3 for filing, that the Commission accept such supplement solely on condition that Dorchester be required to hold in separate fund any payments made by Natural in excess of the price of 7¢ per Mcf at 16.4 psia provided in Section 6 of the Rate Schedule No. 2, subject to refund in the event it shall be ruled by the Supreme Court of the United States that Order No. 26096 is not validly imposed in respect to the purchase of gas by Natural from Dorchester.

The natural gas sold by Dorchester to Natural pursuant to the foregoing rate schedule and supplements thereto is transported and sold in interstate commerce for resale for ultimate public compensation. Accordingly, such sale and rate schedule and supplements governing such sale are subject to the jurisdiction of the Commission.

In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.

To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise.

The Commission *finds:*

(1) Dorchester Corporation is a "natural-gas company" within the meaning of the Natural Gas Act, and its sale of gas to Natural Gas Pipeline Company of America under FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto is a sale of gas for resale for ultimate public consumption.

(2) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Coropration on October 28, 1954, should be accepted for filing, subject to the condition specified herein.

The Commission *orders:*

(A) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Corporation on October 28, 1954, be and the same are hereby accepted for filing subject to the express condition specified in (B) hereof.

(B) The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954.

(C) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7(c) of the Natural Gas Act; nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regu-

lation, contract, or practice affecting such service or rate, nor shall this be deemed as recognition of any contractual right or obligation affecting or relating to such service or rate.

(D) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted, by or against Dorchester Corporation.

By the Commission.

LEON M. FUQUAY,
Secretary.

Adopted: November 24, 1954.

Issued: November 30, 1954.